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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,876	02/14/2002	Jean Fernand Armand Lacrampe	JAB 1694	9445

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EXAMINER

BALASUBRAMANIAN, VENKATARAMAN

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/075,876	Applicant(s) LACRAMPE ET AL.	
	Examiner Venkataraman Balasubramanian	Art Unit 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-18 is/are pending in the application.
 4a) Of the above claim(s) 16-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11/7/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants' response, which included cancellation of claim 21, amendment to claims 1-3, 5, and 10, filed on 11/07/2003, is made of record.

Claims 1-11 and 14-15 are under examination.

Applicants are reminded that non-elected claims 16-18, which were withdrawn from consideration, previously, are to be cancelled to further examination and allowance of this application.

In view of applicants' response, the following rejections made in the previous office action are maintained:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyne et al EP 0987265 for reasons of record. To repeat:

Freyne et al. teaches several 1,2,4-triazinone compounds, which include those claimed in the instant claims for the same use as interleukin-5-inhibitors for treating eosinophil-mediated diseases such as asthma. See entire document/ Particularly, see formula I on page 2 and note especially the definition of X and R² which includes groups claimed herein for instant X and R². See table 2 and 3 on pages 25-29 for compounds.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyne et al., EP 0987265 for reasons of record. To repeat:

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Teachings of Freyne et al., as discussed in the above 102 rejection is incorporated herein. As noted above, Freyne et al. teaches several 1,2,4-triazinyl compounds, which include those, claimed in the instant claims for the same use.

Instant claims permits in X and R² various groups, while Freyne et al. teaches only limited number of such groups as seen in the Table 2 and 3.

However, Freyne et al. teaches equivalency of those compounds exemplified in the Table 2 and 3 with those claimed for the compound of formula I in the definition of the variables groups on page 2.

Thus it would have been obvious to one having ordinary skill in the art at the time of the invention was made to make compounds variously substituted in 1,2,4-triazine ring and the aryl ring as permitted by the reference and expect resulting compounds (instant compounds) to possess the uses taught by the art in view of the equivalency teaching outline above.

Applicants should note that the above two rejections (102/103) are based on the fact that a) the publication date of the reference is more than one year earlier than the instant CIP of PCT application and b) that the reference is an intervening reference c) there is no priority document in the application to verify the conditions of priority are met with or not.

Applicants response to the above two rejections was not persuasive. According to PTO record, the application 10/049,038 has priority to PCT/EP00/07358, which was filed on 7/31/2000. The prior art EP 0 987265 is published on 3/22/2000. Thus the publication date of EP 0 987265 is more than one year.

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Hence the rejection is deemed as proper and is maintained.

Information Disclosure Statement

References cited in the Information Disclosure Statement, filed on 11/07/2003, are made of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be addressed to Venkataraman Balasubramanian (Bala) whose telephone number is (703) 305-1674.

The examiner can normally be reached on Monday through Thursday from 8.00 AM to 6.00 PM.

The Supervisory Patent Examiner (SPE) of the art unit 1624 is Mukund Shah whose telephone number is (703) 308-4716.

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The fax phone number for the organization where this application or proceeding is assigned (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

V. Balasubramanian
Venkataraman Balasubramanian

01/22/2004